



DELTA STEWARDSHIP COUNCIL

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Date: April 22, 2011
To: Delta Stewardship Council Members
From: P. Joseph Grindstaff
Subject: Delta Plan Third Staff Draft

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Today we release the third staff draft of the Delta Plan. We have come a long way from our first staff draft on February 14, largely thanks to extensive public input.

As you recall, our **first staff draft** included various findings about the Delta based on science, government reports, and other information. The findings were statements about the Delta ecosystem, water supply reliability, flood risk, and other issues relevant to the Delta Plan. These findings have since been modified to incorporate a helpful critique by the Delta Independent Science Board suggesting how we might better organize and strengthen the plan. The findings are woven throughout the expanded narrative of the draft Plan rather than separately stated. There has been progress but much remains to be improved and completed.

In the **second staff draft**, released March 18, staff introduced a range of proposed regulations (policies) and proposed recommendations for discussion and for the Council's consideration. These regulations and recommendations were intended to address the problems identified in the findings from the first draft.

In this **third staff draft** we have reconnected the revised findings with the regulations and recommendations, organized, as suggested by the Delta Independent Science Board, into clear problem statements. Our intent is to establish the logic and reasoning behind how each draft regulation relates to the stated problem. This improves the readability of the document, as well as the clarity of what we are trying to achieve in the Delta Plan.

A finance plan framework is included in this draft, but not a complete accounting of dollar needs and recommended sources and strategies. Staff will continue to refine the finance section of the Plan and I hope to start a robust Council discussion of financing in June and July. As noted in the third draft, there are no regulations in the financing plan framework chapter.

Council staff has also focused on improving the narrative in the Plan and refining the regulatory policies and the non-regulatory recommendations. It is now much easier to see how the entire document fits together.

Coequal goals means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

Key Policy Considerations in this Draft

At this stage in the **third staff draft** there are many major policy conclusions:

- **Linked Recommendations:** The major policy elements central to our mandate --- water reliability, protection and improvement of the Delta ecosystem, improved water quality, reduction of risks from flooding, and protecting the unique rural and agricultural culture of the Delta --- are linked. They are inevitably connected to each other and cannot be addressed in isolation.
- **Water Conveyance and Water Storage:** The coequal goals cannot be achieved without improvements to Delta conveyance and additional water storage. Our enabling legislation directs us to *"Improve the water conveyance system and expand statewide water storage"* (Water Code Sec. 85020 (f)). This is one of the eight objectives declared to be essential to achieving the coequal goals.

While the Council does not have regulatory control over the Bay Delta Conservation Plan (BDCP), the draft Delta Plan urges the completion process by December 31, 2014. We have worked to preserve our appellate role relative to the BDCP, which requires that we not pre-judge any issue. It is worth recognizing that at a minimum, it will be another 10 to 15 years before Delta conveyance is operational.

On water storage, whether above or below ground, this draft urges the California Water Commission to convene hearings to consider how incremental improvements to surface and groundwater storage infrastructure and operations may be made in the Delta watershed over the next five to ten years. This is in addition to the Commission's role dealing with major surface storage projects which may take as long as or longer than a conveyance to bring to completion. Major water facilities are expensive, and some proper method of financing is a necessary element of the discussion. The case for action on increasing water storage was made clear this year when "surplus" water was available for export from the Delta, but there was no available storage location south of the Delta to receive the water.

- **Regional Self-Reliance:** The most important short-term way to improve California's water supply reliability is to focus on increasing regional self reliance. This is a directive of the Delta Reform Act, our enabling legislation. Regional self reliance means implementing conservation, more water recycling, more groundwater clean-up, more storm water capture and other local projects to stretch the supplies we have. This process has already begun and will have significant short-term benefits, but it will take decades to fully implement.
- **Public Trust Delta Water Flow Standards:** The coequal goals can only be met if enforceable public trust flow standards for the Delta are developed. Water users should not commit to spending billions of dollars on infrastructure without knowing exactly what future regulatory flows will be. Best available science tells us that the ecosystem cannot regain much of its native functionality in the absence of Delta flows based on the natural hydrograph.
- **An Improved Delta Ecosystem:** The habitat needs of the Delta are many, but because we cannot address all of them at once or even in the next decade, we must prioritize. Policies in the draft Delta Plan aim to prevent actions which further degrade the Delta ecosystem or would encroach upon areas currently identified as a high priority for restoration. For example, in the planning area, any

proposed projects should to the extent possible, be consistent with the draft ecosystem restoration plan developed by state and federal the fish and wildlife agencies.

With regard to **Immediate Needs** for the Delta ecosystem--- the things that can and should be done within the next 10 years and need not wait on completion of the BDCP --- we suggest a focus on five key ecosystem or ecosystem-related areas. Each of these is likely to be very significant in the long-term ecosystem prospects for the Delta and progress can be made relatively quickly. The Draft Delta Plan recommends programs in these areas for priority implementation.

- 1) Yolo Bypass (enhance an existing flood project for ecosystem purposes)
 - 2) Cosumnes and Mokelumne Confluence (both a flood and ecosystem restoration project)
 - 3) Cache Slough Complex
 - 4) Suisun Marsh and;
 - 5) San Joaquin floodplain (both a flood and ecosystem project)
- **Reduced risk in the Delta:** The draft Delta Plan calls for land uses in the Delta to be consistent with current levels of flood protection. This policy, in conjunction with the new FEMA maps, should preclude new urban development in the nonurban areas of the statutory Delta and sets standards for levees that should be achieved in the future. This policy is consistent with the statutory requirement that the Council preserve the heritage of the Delta. Continuing agriculture and expanding habitat rather than encouraging urban development is exactly what the draft Delta Plan envisions for the Delta. The Plan also recommends reforms in emergency planning and flood management with associated funding which are intended to address the risk reduction problem with work on physical facilities.

There are several concurrent state/federal and local ongoing efforts - from the State's Central Valley Flood Protection Plan to the Bay Delta Conservation Plan that are not yet complete. The Council will need to consider future inclusion of those plans, in whole or part, in the Delta Plan and, of course, follow the procedures identified by our enabling legislation with regard to the BDCP. The Delta Plan contemplates the Economic Sustainability Plan being developed by the Delta Protection Commission as a plan of critical importance to enhancing and protecting the Delta as place. It is not complete yet, but deserves special attention from the Council as it is developed.

Covered Actions: What is affected by the Delta Plan

In response to public comment and Council inquiry regarding what is or is not considered a covered action under the Delta Reform Act; we have enhanced significantly the description of a covered action in Chapter 3 and developed the **attached FAQ document**. According to the statute, only those seeking to initiate a "covered action" (that takes place in or partially in the Delta) are required to comply with the regulatory aspects of the Delta Plan. The FAQ document explores the definition under the Delta Reform Act, as well as the Act's exclusions, and runs through several examples of covered actions, as well as examples of actions which are the Delta Plan.

Next Steps and Schedule Recap

At our April 28 and 29 Council meeting we will discuss the third staff draft in detail. Additional Council workshops are planned for May 12 and 13. That meeting is intended to include significant time to address issues of Delta local government, business, residents and land owners. Council direction and continuing public comment will shape a fourth staff draft to be released mid-May. Council direction to staff will be especially critical at this juncture, since the Council will be asked to approve a mid-June draft for circulation with a draft Environmental Impact Report. Circulation of the draft EIR will commence a 45 day public comment period which will conclude on August 1, 2011.

Note that once the draft EIR is circulated, substantive changes to either policies or recommendations or both will likely require recirculation of at least a portion of the draft EIR. That said, the EIR review process is in significant part meant to inform the Council of the proposed Delta Plan's likely effect on the environment so that it can use that information in deciding whether to ultimately approve the Plan. Thus, the Council can at any point alter the Draft Plan based upon what it learns in the EIR process.

On September 15, if the Council has not altered the draft Delta Plan in a manner that requires recirculation, it will direct staff to submit that draft to the Office of Administrative Law (OAL) along with related materials. The OAL will publish a notice of the proposed Delta Plan adoption at least 45 days prior to the Council's final review of the Delta Plan and of comments on that plan.

At the November 17 and 18 Council meetings, the Council will consider the final EIR for certification. At this time, the Council will also consider the final Delta Plan for adoption.

If the Council certifies the EIR and adopts the Delta Plan, staff will submit the Plan to OAL for review, which must be completed within 30 working days of submission. If OAL approves the Delta Plan, or fails to act within 30 working days, it will be deemed to have been approved and OAL will submit it to the Secretary of State for filing. The Delta Plan will become effective 30 days after that filing.

In closing, this third draft Delta Plan represents substantial progress, with much more work to do. I look forward to hearing your comments.